

**MEMORANDUM OF AGREEMENT BETWEEN THE
UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT
AND THE UNITED STATES ARMY CORPS OF ENGINEERS**

ARTICLE I PURPOSE AND AUTHORITY

A. This Memorandum of Agreement ("MOA") is entered into by and between the United States Agency for International Development ("USAID") and the United States Army Corps of Engineers ("USACE" together with USAID, the "Parties" or individually, a "Party") on this 22 day of July, 1999 for the purpose of establishing a framework governing the respective responsibilities of the Parties for the provision of goods and services, as specified in participating agency service agreements, resource support service agreements, and other 632(b) agreements of the FAA (as defined below) entered into under this MOA (collectively, "Support Agreements", individually, a "Support Agreement"). Pursuant to the Support Agreements, USACE will provide engineering and construction services, assistance and other goods to USAID relating to the emergency relief and reconstruction activities in Central America, the Caribbean and Colombia.

B. Section 632(b) of the Foreign Assistance Act of 1961, as amended ("FAA")(22 U.S.C. 2392(b)), and 10 U.S.C. 3036(d) set forth the authority for this MOA.

ARTICLE II SCOPE

A. Pursuant to this MOA and as specified in individual Support Agreements, USACE will provide a variety of goods and services, including technical assistance such as engineering studies, program/project management, design, construction and contracting ("Services"). USACE will provide such Services through its existing offices, or through on-site presence. USACE may also contract with private firms to perform such Services when appropriate, although the Parties understand that to the extent practicable USAID will contract with private firms directly.

B. The Parties agree that the provision of Services will be set forth in specific and detailed Support Agreements in form and substance satisfactory to both Parties and as further specified in Article IV. Nothing in this MOA requires USAID to utilize USACE for the provision of such Services, or to require USACE to provide such Services, except as may be set forth in a specific Support Agreement.

ARTICLE III COMMUNICATIONS

A. The principal representative ("Principal Representative") of each Party will serve as its central point of contact on matters relating to this MOA. The Principal Representative will be the person serving in the capacity as set forth below:

USAID
Director, Office
of Procurement

USACE
Chief, Programs Management
Division

B. Each Party may appoint an additional representative to facilitate communication under each Support Agreement ("Support Agreement Representative").

ARTICLE IV SUPPORT AGREEMENTS

A. In response to a request from USAID for Services pursuant to this MOA, USACE and USAID will enter into a mutually agreed upon Support Agreement that will outline the requested support and should include the following:

1. a general description of the Services, including the scope of work and schedule;
2. funding arrangements, including method of billings and accounting procedures;
3. procedures for coordinating with each Party's Support Agreement Representative;
4. frequency and types of reports;
5. identification of responsible Party for equipment, contract administration, records maintenance, intellectual property (including rights thereto) and audits;
6. contracts (including task orders under existing contracts), if any, whereby USACE engages a third party to provide Services under a Support Agreement ("Implementing Contract"); procedures for USAID participation in the pre-award contracting phase to allow for input on past performance of potential contractors of such Implementing Contracts, if necessary;
7. procedures for amending or modifying the individual Support Agreement; provided, however, such procedures do not conflict with this MOA;
8. procedures for terminating individual Support Agreements and procedures for transferring or terminating an Implementing Contract when the corresponding Support Agreement is terminated; provided, however, such procedures do not conflict with this MOA; and

9. such other particulars as are necessary to facilitate the provision of Services under the Support Agreement such as those tasks set forth in Article V(C).

B. USACE will provide specific Services only after a Support Agreement has been duly executed by each Party's Support Agreement Representative, or other authorized representative. Upon execution, the Support Agreement shall constitute a valid reimbursable order pursuant to the authorities cited therein and herein.

ARTICLE V RESPONSIBILITIES OF THE PARTIES

A. USACE will provide USAID with Services in accordance with this MOA and the Support Agreement. In addition, USACE will:

1. use its best efforts to provide Services either by Implementing Contract or by in-house effort within the scope of the specified Support Agreement and subject to the provisions of this MOA;
2. provide detailed periodic progress, financial and other reports to USAID as agreed upon in the Support Agreements. Financial reports shall include information on all funds received, obligated and expended and on forecast obligations and expenditures as further detailed in Article VI below;
3. inform USAID of all Implementing Contracts entered into under each Support Agreement and ensure that such Implementing Contracts contain assignment provisions pursuant to Article XI(F);
4. assist USAID by providing information necessary to comply with the requirements of Section 621(a) of the FAA, OMB Circular A-76, authorities cited pursuant to an individual Support Agreement and the authorities cited herein; and
5. notify USAID of any Cost Overruns, as defined in Article VI(C), or Claims as defined in Article VII(B), in accordance with the procedures set forth in each respective Article.

B. USAID will fund USACE for the provision of Services in accordance with this MOA and the Support Agreement. In addition, USAID will:

1. make reasonably available to USACE, to the extent practicable, any material, equipment and data provided by the host country or any local governmental body of the host country ("Host Country") necessary to expedite the work to be performed under a Support Agreement;

2. assist USACE in obtaining logistical and administrative services;
3. comply, if applicable, with the requirements of Section 621(a) of the FAA, OMB Circular A-76, authorities cited pursuant to an individual Support Agreement and the authorities cited herein; and
4. pay the costs of USACE's provision of Services under each Support Agreement, in accordance with Article VI below. Each Support Agreement will contain a funds availability certificate in accordance with USAID's normal procedures.

C. Pursuant to a specific Support Agreement, the Parties will designate which Party will have primary responsibility to:

1. obtain necessary permits and licenses from the United States or the Host Country;
2. use best efforts to obtain, in an expeditious manner, duty free importation of materials, equipment, supplies, services and other items that may be provided by USACE or its contractors for the purposes of work performed under the Support Agreement;
3. use best efforts to ensure exemption of any US or third country contractors from Host Country tax liabilities;
4. obtain necessary real estate interests and access to all work sites and support facilities;
5. provide security necessary to protect the work site, material, equipment and USACE personnel and contractors in the Host Country; and
6. assist, to the extent practicable, in obtaining diplomatic accreditation (or the equivalent) for USACE personnel, including contractor personnel, as members of the administrative and technical staff of the diplomatic mission of the United States in the Host Country. USACE shall be notified in any case where USACE personnel, including contractor personnel cannot be so accredited.

ARTICLE VI FUNDING AND PAYMENT OF COSTS

A. Each Support Agreement will contain a detailed budget and will set forth the total amount to be obligated under such Support Agreement which shall include all reasonably estimated costs associated with USACE's provision of Services under the Support Agreement ("Total Obligated Amount"), as required pursuant to 31 U.S.C. 1501 in order

to comply with 31 U.S.C. 1341. USACE will use best efforts to ensure that costs under each Support Agreement do not exceed the Total Obligated Amount.

B. Each Support Agreement will set forth a detailed schedule for payments whereby USAID will reimburse USACE, in U.S. currency, for USACE's provision of Services theretofore provided, except the Parties may agree to an advance of funds for Services to the extent set forth in a side letter to this MOA. Subject to applicable law, the Parties understand that Support Agreements obligate funds under Section 632(b) of the FAA; such funds are available until expired and are not subject to the de-obligation requirements of 31 U.S.C. 1535.

C. If during USACE's provision of Services under a Support Agreement, the actual cost of the Services is reasonably forecast to (i) result in a Cost Overrun (as defined below) or (ii) exceed certain payment schedules, activity milestones, or other progress indicators under the Support Agreement, USACE shall promptly provide written notice to the Support Agreement Representative within 3 business days of such forecast (except in cases involving Claims, as such term is defined in Article VII(A), for which the notification period will be 5 days). For purposes of this MOA and each Support Agreement, a Cost Overrun is defined as an instance in which actual costs (including costs relating to Claims) exceed the Total Obligated Amount. In the event of a reasonably forecasted Cost Overrun, USACE, in addition to notifying the Support Agreement Representative as required above, shall provide written notice to the USAID Principal Representative within 3 business days of such forecast (except in cases involving Claims for which the notification period will be 5 days). For purposes of this MOA and each Support Agreement, USACE will use best efforts to forecast Cost Overruns 60 days prior to the occurrence of such Cost Overrun and in accordance with applicable construction industry standards.

D. Upon receipt of notice pursuant to Paragraph (C) above regarding Cost Overrun notification, USAID may: (i) require the Support Agreement to be amended to increase the Total Obligated Amount within 30 days or such other time as may be mutually agreed upon; (ii) require that the scope of the Services under the Support Agreement be amended to keep costs within the scope of the Total Obligated Amount; or (iii) terminate the Support Agreement and require USACE to assign any Implementing Contracts under the affected Support Agreement to USAID, pursuant to Articles XI(F) and XII(B) below.

E. Within 90 days of completing the work under the Support Agreement, USACE shall conduct a final accounting to determine actual costs of the Services under the Support Agreement ("Final Costs"). In the event USAID determines that the Total Obligated Amount exceeds the Final Costs, USAID will deobligate any excess obligated funds that are not needed for Support Agreement activities, after final reimbursement is made to USACE.

F. USAID will pay actual costs incurred by USACE under each Support Agreement up to the Total Obligated Amount. In the event actual costs (Final Costs plus any additional other costs determined after the final accounting) incurred by USACE exceed

the Total Obligated Amount, USAID agrees to pay such excess actual costs from legally available funds, provided that USACE has materially complied with notification requirements set forth in Paragraph C of this Article relating to Cost Overruns and Article VII (B) relating to Claims. If, in such case, USAID has no funds legally available to pay excess actual costs, USAID will use reasonable efforts to testify before the relevant USAID appropriations committees in Congress during USAID's regular budget hearings in support of a budget request for USAID to receive appropriations to pay for such excess actual costs which remain unpaid.

G. In the event actual costs incurred by USACE exceed the Total Obligated Amount, and USACE has failed to comply materially with notification requirements set forth in Paragraph C of this Article relating to Cost Overruns and Article VII (B) relating to Claims, responsibility for payment of the excess actual cost will be determined in accordance with applicable law. USACE will use reasonable efforts to testify before the relevant USAID appropriations committees in Congress during USAID's regular budget hearings in support of a budget request for USAID to receive appropriations to pay such excess actual costs.

ARTICLE VII CONTRACT CLAIMS AND DISPUTES

A. All claims, disputes and litigation ("Claims") by contractors arising under or relating to contracts awarded by USACE under an individual Support Agreement shall be resolved in accordance with U.S. federal law and the terms of this MOA, the Support Agreement and the individual contract.

B. USACE shall have dispute resolution authority for these Claims and shall be responsible for litigating all Claims, including appeals arising under or related to contracts awarded by USACE and for coordinating with the U.S. Department of Justice, as appropriate. USACE shall provide written notification within 5 business days to the Support Agreement Representative, the Principal Representative and the General Counsel of USAID upon USACE's receipt of any such Claim. USACE shall also afford USAID significant and timely opportunity to advise, assist, review and comment on the Claims and any such process or proceedings, including any resulting settlement negotiations.

C. All other claims, disputes and litigation by contractors arising from or relating to contracts awarded and administered by USAID will be the responsibility of USAID. USACE will provide advice and assistance as requested.

ARTICLE VIII APPLICABLE LAWS

This MOA and all Support Agreements (including related documents, schedules, etc.) shall be governed by the applicable statutes, regulations, directives and procedures of the United States. Unless otherwise required by law, the Department of the Army policies, procedures, and regulations shall govern all contract work undertaken by the

USACE, except, with respect to USAID's contracting authorities, as agreed to in writing by the Parties in a side letter to this MOA. To the extent consistent with U.S. law, all work performed under this MOA through the Support Agreements shall conform to applicable Host Country law. In the event of conflict with Host Country law, the Parties shall negotiate in good faith to resolve the conflict with respect to each such affected Support Agreement.

ARTICLE IX DISPUTE RESOLUTION

The Parties agree to cooperate in all matters under this MOA and each specific Support Agreement. In the event of a dispute, the Parties shall use their best efforts to resolve that dispute in an informal fashion through consultation and communication or other forms of alternative dispute resolution. The Parties agree that, in the event such measures fail to resolve the dispute, they shall refer it for resolution to the Office of Management and Budget or to another government agency with proper jurisdiction and venue to settle disputes between federal agencies.

ARTICLE X PUBLIC INFORMATION

A. In general, USAID is responsible for dissemination of all public information relating to Services under this MOA and any Support Agreement. USACE may make public announcements and respond to all inquiries relating to the ordinary procurement and contract award and administration process. USAID or USACE shall make its best efforts to give the other Party advance notice before making any public statement regarding work contemplated, undertaken, or completed pursuant to a Support Agreement.

B. Justification and explanation of each of the Party's programs before Congress and other agencies, departments, and offices of the U.S. Government shall be the responsibility of that Party. The other Party may provide, upon request, any assistance necessary to support the justification or explanations of the programs conducted under this MOA or any of the Support Agreements.

ARTICLE XI MISCELLANEOUS

A. Other Relationships. This MOA shall not affect any pre-existing or independent relationships or obligations between USAID and USACE.

B. Survival. In the event the MOA expires or is terminated, the provisions of the MOA remain in effect with respect to the Support Agreements executed while the MOA was in effect.

C. Severability. If any provision of this MOA is determined to be invalid or unenforceable, the remaining provisions shall remain in force and unaffected to the fullest extent permitted by law and regulation.

D. Conflict between MOA and Support Agreements. In the event of a conflict between the MOA and the individual Support Agreement, the provisions of the MOA will govern, except as agreed to in writing by the Parties in a side letter to this MOA.

E. No Waiver. No delay in exercising any right or remedy accruing to a Party in connection with this MOA or the Support Agreements will be construed as a waiver of such right or remedy.

F. Assignment of Implementing Contracts. With the exception of pre-existing USACE indefinite delivery/indefinite quantity contracts, USACE agrees, upon request by USAID, to include such an assignment provision in each such Implementing Contract it enters into pursuant to any Support Agreement. In such cases, USACE agrees, upon request by USAID, to assign any Implementing Contracts to USAID.

ARTICLE XII AMENDMENT, MODIFICATION AND TERMINATION

A. This MOA may be modified or amended only by written, mutual agreement of the Parties and specifically not through course of dealing or custom.

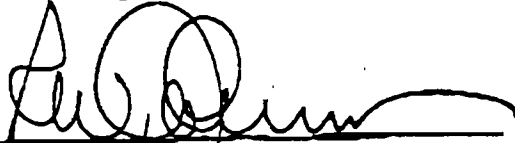
B. Either Party may terminate this MOA by providing written notice to the other Party. The termination shall be effective upon the sixtieth calendar day following notice, unless a different date is agreed upon. In the event of termination of this MOA, the Parties shall have the right to terminate each of the Support Agreements, in whole or in part, pursuant to the termination provisions of such Support Agreements and in conformance with Article VI. In the event of termination of any Support Agreement, USACE will terminate such Implementing Contracts entered into pursuant to such terminated Support Agreement or, at USAID's option, promptly assign such Implementing Contracts to USAID pursuant to Article XI(F). In the event a Support Agreement is terminated, USAID remains responsible for (i) costs incurred prior to termination; (ii) all costs associated with terminating the Support Agreement and any Implementing Contracts used to perform under the Support Agreement; (iii) contract claims arising out of the Implementing Contracts related to the terminated Support Agreement; and (iv) all costs associated with transferring any Implementing Contracts to USAID, subject to the limitations of Article VI above.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

ARTICLE XIII EFFECTIVE DATE

This MOA is effective when signed by both USAID and USACE.

United States Agency for International
Development



Name: Rodney W. Johnson
Director, Office of Procurement

Date: July 22, 1999

United States Army Corps of Engineers

For the Commander.



7.22.99

Name: Stephen E. Browning
Chief, Programs Management
Division

Date:

To: MEMORANDUM FOR RECORD

From: R. David Harden, U.S. Agency for International Development (USAID)
Paul M. Murphy, U.S. Army Corps of Engineers (USACE)

Re: Implementation of Memorandum of Agreement (MOA) between USAID and USACE, dated 22 July 1999.

This Memorandum for Record (MFR) sets forth our collective understanding regarding the "conflicts provision" in Article XI(D) of the MOA. This MFR is not legally binding on the two agencies and is to be used only to explain the "conflicts provision" to contracting officers and other field support staff for both USAID and USACE.

Article XI(D) of the MOA states, "In the event of a conflict between the MOA and the individual Support Agreement, the provisions of the MOA will govern." In an effort to avoid confusion with respect to these conflicts, we have noted where field personnel and counsel for both USAID and USACE will defer to the provisions of the MOA. We have used USAID's "PASA/RSSA Standard Provisions" as a model Support Agreement to demonstrate where such conflicts occur. Nevertheless, if the order or content of these "Standard Provisions" is changed or another form of Support Agreement is used (such as 632(b) non-PASA/non-RSSA agreements), the principles that we have noted continue to apply. While we have attempted to note all places where conflicts do occur, this list is not meant to be exclusive, and we stress that Article XI(D) will continue to prevail in the case of any other conflicts between the MOA and any Support Agreement.

The following sections of USAID's "PASA/RSSA Standard Provisions" have been superceded by the MOA. All Support Agreements entered into by and between the Parties will either delete these sections of the Support Agreement or incorporate these changes in the "Remarks" section of the Support Agreement.

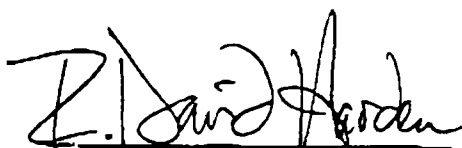
- 1) The last two sentences of paragraph 1B. [These are addressed in Article VI of the MOA.]
- 2) To the extent that there is a conflict, the last two sentences of paragraph 1E and the first sentence of paragraph 1F. [These are addressed in Article VIII of the MOA.]
- 3) Paragraph 2C. [The MOA already contemplates contracting, and this issue must be specifically addressed by virtue of Article IV(A)(6) of the MOA.]
- 4) Paragraph 2D. [Addressed in Articles IV & VIII of the MOA.]

- 5) Everything after the second sentence of paragraph 2E. [These are addressed in Article VIII of the MOA.]
- 6) Paragraph 2G. [Addressed in Article VIII of the MOA.]
- 7) Paragraph 5E. [Addressed in Article VI of the MOA.]
- 8) Paragraph 9. [Addressed in Article XII of the MOA.]
- 9) Paragraph 10. [Addressed in Article VIII of the MOA.]

The following two items are provided as points of clarification and concern policies and procedures that are internal to USACE.

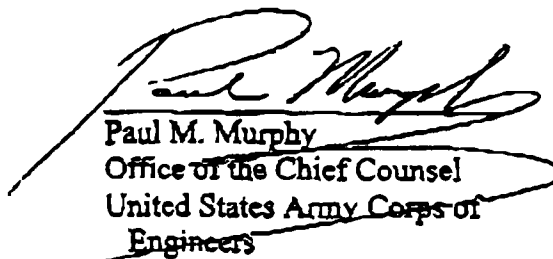
- 1) With respect to paragraph 2H, USACE regularly obtains waivers from the Defense Base Act. In such cases, the Defense Base Act will not apply.
- 2) With respect to paragraph 7A, Department of Defense (DOD) policy requires that before any DOD personnel perform work in a foreign country, they be afforded certain protections. Traditionally, the Corps has sought to have such personnel accredited as members of the administrative and technical staff of the diplomatic mission of the United States in the host nation. Both Parties understand that DOD personnel cannot begin work in the host nation until such protections are obtained.

This MFR is intended to provide guidance to contracting officers and other field support staff for both USAID and USACE. If there are any questions with respect to the MOA or this MFR, questions should be directed to USAID's Office of the General Counsel and USACE's Office of the Chief Counsel, respectively.



R. David Harden
Office of the General Counsel
United States Agency for
International Development

Date: 22 July 99



Paul M. Murphy
Office of the Chief Counsel
United States Army Corps of
Engineers

Date: 22 JULY 99

Mandatory Reference: 306
File Name: 306254m1

PASA/RSSA Standard Provision
1. Governing Principles
PASA/RSSA, 1. Governing Principles

PASA/RSSA Standard Provisions

1. GOVERNING PRINCIPLES

- A. Participating Agency (PA) Selection - USAID looks to other PA's for technical assistance in their fields of competence only in cases where USAID direct-hire staff are not available and where the PA has unique or particularly suited resources available to carry out the technical assistance and can do so without unduly interfering with its domestic program.
- B. Reimbursed Technical Assistance - Any technical assistance for which a PA is to be reimbursed must be authorized prior to the performance of the technical assistance by an agreement signed by the USAID agreement officer on PASA Form AID 2-2 or RSSA Form AID 240-1, regardless of whether it is for the long-term service of a team or short-term for an individual. This requirement is applicable to increments of new work for which funding is necessary. Continuation of services by a PA beyond the expiration date of the PASA/RSSA or incurrence of costs beyond available funds requires the prior specific authorization by the USAID agreement officer. Until such time as the PASA/RSSA is amended to provide additional funds, the PA is not authorized to expend funds in excess of the current obligation.
- C. Authority to Execute PASA/RSSAs - USAID contracting officers (hereafter designated as agreement officers) have the authority to execute a PASA or RSSA and amendments thereto. When PASA/RSSA's are executed by USAID's Office of Procurement (MS/OP) and subsequently transferred to the field for administration, all responsibilities of the MS/OP agreement officer, as set forth in these Standard Provision, are transferred to the field agreement officer who is responsible for procurement in the Mission having responsibility of the requirement.
- D. Responsibility for Project Performance - The PA assumes technical responsibility for project performance, including staffing, supervision,

backstopping, and reporting—subject to general guidance from USAID.

E. PA Personnel - PASA/RSSA personnel working for USAID remain on their parent-agency's employment rolls and position ceilings. The PA personnel utilized in the United States operate in accordance with the rules and regulations of their parent agency unless otherwise required by USAID legislation or regulations. When overseas, they are subject to USAID regulations and entitled, to the extent regulations permit, to the same support and privileges as USAID direct-hire staff.

F. Responsibility for Administrative Arrangements - The USAID Operations Manual for Participating Agencies, as set forth in USAID Handbook 12, Use of Federal Agencies, is applicable to PA employees serving under this agreement. Before the employee undertakes an overseas assignment, the PASA or RSSA employee's own agency is responsible for making the administrative arrangements required, including arranging all predeparture clearances (i.e. health (including medical waivers), security, language training and testing, orientation, etc.).

G. Official Communications with the field on technical matters are the responsibility of the USAID project officer if the PASA is being administered in Washington. The project officer will obtain appropriate clearances and authorize transmission. Messages pertaining to staffing and budgetary matters should be cleared with the agreement officer and the project office prior to transmission.

H. Participant Training - All participant training required in conjunction with this agreement will be implemented through Mission-generated and funded PIO/Ps in accordance with policies, allowances, guidance, and reporting requirements stated in USAID Handbook 10, Participant Training.

I. Restrictions on PASA and RSSA Personnel - Except as specifically provided in writing by USAID, PASA and RSSA personnel shall not: officially represent USAID at any function; approve policy documents; supervise USAID employees; negotiate, review, or sign contracts on behalf of USAID; certify vouchers; select or recruit USAID employees; or prepare USAID funding or budget documents.

PASARSSA.1

PASA/RSSA Standard Provision 2. Contracting Under a PASA/RSSA

PASA/RSSA, 2. Contracting Under a PASA/RSSA

2. CONTRACTING UNDER A PASA/RSSA

A. This provision applies to contracts, purchase orders, grants, cooperative agreements, Intergovernmental Personnel Act assignments, and the employment of experts and consultants hired under authority of 5 U.S.C. 3109 when these instruments are specifically in support of a PASA/RSSA effort. For the purposes of this provision, the term

"contract" is deemed to include these instruments--with the exception that grants, cooperative agreements, and appointments covered by the Federal Employee Compensation Act are not included in reference to the requirement for Defense Base Act (DBA) insurance. Further, grants and cooperative agreements are not subject to the requirement for USAID approval of personnel compensation in excess of the Senior Executive Service level ES-6.

B. The terms of this provision do not apply to contracts with the DOE affiliated energy agencies, such as PETC and METC, nor to existing relationships with Government-Owned-Contractor-Operated entities, but do apply to subcontracts thereunder with private sector organizations or individuals.

C. Contracting by a PA must be specifically authorized in advance by the USAID agreement officer. Specific contracts must be identified in the PA's Budget submission.

D. The PA will obtain the USAID agreement officer's approval of the subcontract prior to execution. The following documentation will be submitted in support of the request to contract, and is required prior to executing the contract, even if the contract was identified in the PASA/RSSA:

(1) Documentation describing the selection methodology, including any non-competitive justifications necessitated by the FAR. Small and disadvantaged business subcontractors shall be identified.

(2) The contract statement of work, the general provisions and a negotiation memorandum setting forth the cost and price analysis with special consideration to type of contract, indirect cost, personnel compensation, including documentation such as salary history and fee, if any.

E. It is the responsibility of the PA to make the required OMB Circular A-76 determinations and to follow the Federal Acquisition Regulations (or the OMB Circular A-110, as applicable), as implemented by the PA. When USAID authorized contracting is performed under a PA's own contracting authority, such authority must be cited in the contract or purchase order. The PA shall also follow the USAID Acquisition Regulations provisions with respect to

source/origin, nationality and commodity eligibility. (Pertinent AIDAR regulations are obtainable from the USAID agreement officer.) The PA agrees to require the contractor to insert these requirements in any subcontract at any tier.

F. The PA must obtain advance approval from the USAID agreement officer to authorize personal compensation in excess of the Senior Executive Service level ES-6 for other than grants and cooperative agreements. This requirement extends to the personal compensation elements of negotiated fixed-price or lump-sum contracts, when personal compensation elements are specifically identified in the proposal and are specifically discussed when negotiating the contract amount. PA's are expected to establish reasonable levels of compensation. Personal compensation paid shall not exceed the highest such compensation received in the past three years, or the daily rate of an ES-6, whichever is lower, without the prior written approval of the USAID agreement officer. Requests for approval of compensation levels shall be accompanied by Form AID 1420-17, "Employee Biographical Data Sheet", which is obtainable from the agreement officer.

G. All contracts issued specifically in support of the PASA/RSSA effort shall include a requirement that lower-tier subcontracting and consultant services require the prior approval of the USAID agreement officer.

H. The Defense Base Act requires employees working overseas under contracts to be provided with worker's compensation insurance. This requirement applies to all contracts (other than grants, cooperative agreements, and appointments covered by the Federal Employees Compensation Act) that involve overseas performance which are awarded by PA's under PASA's or RSSA's. The PA will include the following language in all such contracts:

(1) The Contractor agrees to procure Defense Base Act (DBA) insurance pursuant to the terms of the contract between USAID and USAID's DBA insurance carrier unless the Contractor has a DBA self insurance program approved by the Department of Labor or has an approved retrospective rating agreement for DBA.

(2) If USAID or the Contractor has secured a waiver of DBA coverage for Contractor's employees who are not citizens of, residents of, or hired in the United States, the Contractor agrees to provide such employees with worker's compensation benefits as required by the laws of the country in which the employees are working, or by the laws of the employees native country, whichever offers greater benefit. The list of countries for which USAID has secured waiver of DBA coverage is shown in AIDAR 728.305-70(a)(2) (48 CFR 728.305-70(a)(2)).

(3) The Contractor further agrees to insert in all subcontracts hereunder to which the DBA is applicable, a provision similar to this standard provision including this sentence, imposing on all subcontractors a like requirement to provide overseas workmen's compensation insurance coverage and obtain DBA coverage under the USAID requirements contract."

I. The PA will be responsible for the approval and reporting requirements of contracted advisory and assistance services that are subject to OMB Circular A-120.

Alternate 1: For PASA/RSSAs with OIH/DHHS, use the following in lieu of Paragraph B.:

B. The terms of this standard provision do not apply to agreements with PHS-related federal health agencies, but do apply to contracts thereunder with private sector organizations.

Alternate 2: For PASA/RSSAs with OICD/USDA, use the following in lieu of Paragraph B.:

B. The terms of this standard provision do not apply to pre-existing agreements with land-grant universities provided the agreement utilizes the university in the capacity covered by the pre-existing agreement. For example, if the pre-existing agreement is a cooperative agreement with the university to support the Extension Service, and if the agreement is to utilize the capacity of the Extension Service, the terms of this standard provision would not apply. If however, another department of the university is being accessed, the provision would apply. USDA will submit to the USAID agreement officer a copy of the pre-existing agreement when a land-grant agreement is considered exempt from this provision.

PASARSSA.2

PASARSSA Standard Provision

3. Reports

PASARSSA, 3. Reports

3. REPORTS

A. Unless otherwise provided in the schedule of this agreement, the PA

shall prepare:

(1) Semi-annual reports, within 45 days following the end of the period being covered, which shall include the following:

(a) Substantive reports—covering the status of the work under the agreement, indicating progress made with respect thereto, setting forth plans for the ensuing period, including recommendations covering the current needs in the fields of activity that are covered under the terms of this agreement—to be submitted as follows:

1. Agreement officer—3 copies
2. Project office—4 copies
3. PPC/CDIE/DI—2 copies (See Paragraph C.)

(b) An administrative report—covering expenditures, foreign country national trainees, and personnel employed under the agreement, including the USAID-funded, full-time employees stationed in the United States—to be submitted as follows:

1. Agreement officer—3 copies
2. Project office—4 copies

(2) Quarterly reports within 15 days after the end of the quarter, which shall include the following:

(a) The number of both assigned and temporary duty personnel who have been assigned to USAID during that quarter, including those who started and completed an assignment during the quarter, those who began before the quarter and terminated during the quarter, and those who will continue beyond the end of the quarter.

(b) Billing notices (see Provision No. 5.)

(3) Other reports, within 15 days after generation, which shall include the following:

(a) one copy of all personnel actions involving FC personnel appointments, transfers, promotions, and terminations during the period of USAID funding to be sent to the agreement officer—1 copy

(b) One copy of time and attendance records—which are the responsibility of the employee serving overseas to forward to the appropriate PA

for record keeping and processing salary checks--when required by the project officer.

B. Unless otherwise provided in the schedule of this agreement, within 60 days of the conclusion of the work hereunder, the PA shall prepare a final report which summarizes the accomplishments of the assignment, methods of work used and recommendations regarding unfinished work and/or program continuation--to be submitted as follows:

1. Agreement officer--3 copies
2. Project office--4 copies
3. PPC/CDIE/DI--2 copies

C. When PPC/CDIE/DI is indicated in the distribution of reports, the reports should be submitted to it at the following address:

PPC/CDIE/DI, ACQUISITIONS
Agency for International Development
Room 209, SA-18
Washington, D.C. 20523-1802.

D. The title page of all reports submitted pursuant to this standard provision shall include a descriptive title, the author's name(s), agreement number, project number and title, PA's name, name of the USAID project office, and the publication or issuance date of the report.

E. When preparing reports, the PA shall refrain from using elaborate art work, multicolor printing and expensive paper/binding, unless it is specifically authorized to do so in the schedule of this agreement. Wherever possible, pages should be printed on both sides using single spaced type.

F. The metric system of measurements shall be used for specifications that are contained in reports unless USAID determines in writing that such use is impractical or is likely to cause significant inefficiencies or the loss of markets to U.S. firms.

PASARSSA.3

PASARSSA Standard Provision 4. USAID Facilities

PASA/RSSA, 4. USAID Facilities**4. USAID FACILITIES**

The use of USAID facilities (office space, equipment, vehicles, etc) and USAID clerical/technical personnel hereunder must be specifically authorized in this PASA.

PASARSSA.4**PASA/RSSA Standard Provision****5. Billing Procedures****PASA/RSSA, 5. Billing Procedures****5. BILLING PROCEDURES**

A. The PA will use one of various procedures specified below to submit monthly or quarterly billings to:

(The agreement officer will insert the name and address of designated USAID paying office. When the paying office is USAID/W, the Agency Location Code, 72-00-0001, will also be inserted.)

B. If the paying office specified in the agreement is USAID/Washington, the On-line Payment and Collection (OPAC) system is USAID's preferred method of being billed. However, the PA may also bill USAID/Washington using the Simplified Intra-governmental Billing and Collection (SIBAC) system (if authorized by the Department of the Treasury) or using Standard Forms 1080 or 1081.

C. If an USAID overseas mission is designated as the paying office, the PA must use Standard Forms 1080 or 1081 procedures because the missions can not process OPAC or SIBAC billings.

D. A Financial Status Report will be submitted to the paying office with each billing to itemize expenditures to the level of detail specified in the PASA Budget Plan (Appendix B) or the RSSA Budget Agreement (Appendix A). The Financial Status Report will substantially follow the format in Attachment A of this Appendix.

E. Amounts determined to be unallowable under the agreement will not be reimbursed or will be charged-back to the PA if payment was made prior to such a determination.

F. Additional details of PA-specific billing procedures may be included in a supplemental memorandum of understanding between the two agencies, which is attached or referenced in the schedule if applicable.

PASARSSA.5

PASARSSA Standard Provision

6. Disposition of Records and Property When an USAID-Funded Activity Terminates
PASARSSA, 6. Dispos. of Records & Prop. When an USAID-Funded Act. Ends

6. DISPOSITION OF RECORDS AND PROPERTY WHEN AN USAID-FUNDED ACTIVITY TERMINATES

A. Records (Other Than Property)

Responsibility for maintenance of records and their final disposition rests with the PA. Upon written request, a Mission will arrange for destruction of records without any screening of their contents or significance.

B. Property

(1) Overseas

All USAID-funded commodities unexpended and on hand on termination of a PASA project procured by and under the control of the PASA technicians are to be turned over to the cooperating country and/or the USAID Mission, as determined by USAID.

(2) Domestic

When there is no longer an USAID need for equipment or termination of USAID support, the PA, as mutually agreed with USAID, will:

- credit USAID the depreciated value of the commodities, or
- return the items to USAID, or

— otherwise dispose of them.

C. Disposition of Property Records

The PA will see that itemized property records will be maintained on all nonexpendable items costing more than \$50 each. The records will include, at a minimum, the description, date acquired, from whom, cost, and present location.

PASARSSA.6

PASA/RSSA Standard Provision

7. PASA (FC) Employees' Privileges and Immunities

PASA/RSSA, 7. PASA (FC) Employees' Privileges and Immunities

7. PASA (FC) EMPLOYEES' PRIVILEGES AND IMMUNITIES

A. Overseas Employees

All PA direct-hire employees stationed overseas and funded under PASA's and are entitled to the same privileges and immunities as an equivalent USAID direct-hire employee at the same post.

Note: This does not mean that the PASA technician is necessarily entitled to obtain support from the same source as USAID direct-hire staff. For example, in some instances, housing may be provided by a country institution for a PASA employee and by the Mission or Embassy for a direct-hire person. However, the quality of the PASA employee's housing and facilities are to be equivalent with that provided a direct-hire employee at the same grade.

B. APO, Commissary, PX and Club Privileges

PASA employees under USAID agreements will receive the same APO, Commissary, PX, and club privileges as USAID direct-hire employees when allowed by the regulations of the organization to which the facility is attached. PASA employees and their dependents are entitled to the same health benefits as USAID direct-hire employees.

PASARSSA.7

PASARSSA Standard Provision

8. Standards of Conduct

PASARSSA, 8. Standards of Conduct

8. **STANDARDS OF CONDUCT**

PASA personnel and their dependents are required to maintain high standards of personal conduct expected of U.S. Government officials representing the United States overseas. Failure to do so can lead to disciplinary action.

PASARSSA.8

PASARSSA Standard Provision

9. Termination of Service Before Scheduled Date

PASARSSA, 9. Termination of Service Before Scheduled Date

9. **TERMINATION OF SERVICE BEFORE SCHEDULED DATE**

When a program is curtailed or terminated, USAID determines which categories of employees (USAID direct-hire, PASA, or contract) are to be retained. If a PASA employee's appointment is to be terminated, the PA will be given adequate advance notice of termination plans.

Note: There is no reduction-in-force competition between
USAID direct-hire and PASA staff.

PASARSSA.9

PASARSSA Standard Provision

10. Removal of PA Employees From USAID Funding

PASA/RSSA, 10. Removal of PA Employees From USAID Funding

10. REMOVAL OF PA EMPLOYEES FROM USAID FUNDING

An assigned employee, on completion of his/her assignment, where he/she is not entitled to home leave, shall cease having his/her salary and benefits attributable to USAID under a Foreign Service Assignment not later than the next regular pay period ending after the employee's return to the United States. Exceptions may be made to this rule with the concurrence of the agreement officer.

PASARSSA.10

PASA/RSSA Standard Provision

11. Communications Products

PASA/RSSA, 11. Communications Products

11. COMMUNICATIONS PRODUCTS

A. Definition - Communications products are any printed material (other than non-color photocopy material), photographic services or video production services.

B. Standards - USAID has established standards for communications products. These standards must be followed unless otherwise specifically provided in the agreement or approved in writing by the USAID agreement officer. A copy of the standards for USAID-financed publications and video productions is available from the USAID agreement officer.

C. Communications products which meet any of the following criteria are not eligible for USAID financing under this agreement unless they are specifically identified and authorized in the agreement schedule or in writing by the USAID agreement officer:

(1) All communications materials funded by operating expense account funds.

(2) Any communication products costing over \$25,000, including the costs of both preparation and execution. For example, in the case of a

publication, the costs will include research, writing and other editorial services (including any associated overhead), design, layout and production costs.

(3) Any communication products that will be sent directly to, or is likely to be seen by, a Member of Congress or Congressional staffer.

(4) Any publication that will have more than 50 percent of its copies distributed in the United States (excluding copies provided to CDIE and other USAID/W offices for internal use).

PASARSSA.11